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Essay

What Price Financial Stability? Evaluating the European Union Financial Transactions Tax

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ESSAY

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ANDREW W. HARTLAGE*

INTRODUCTION

Though the global financial crisis reached an identifiable peak in the United States in September of 2008, events unfolded more slowly in the European theater. Banking crises in Cyprus, Greece, Iceland, and Ireland were punctuated by the failures of large financial institutions in Germany, the United Kingdom, and the Benelux countries. Similarly, while the United States reached a significant landmark along its path of financial reform with the passage in July 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[1] Europe's progress has been piecemeal, moving with fits and starts at the national, supranational, and international levels.[2]

Despite some modest progress, significant threats to financial stability in Europe remain unaddressed, and the work of shoring up the European financial system continues. In February 2013, as part of this ongoing programme, the European Commission ("Commission") proposed that some Member States levy a uniform tax on financial transactions beginning in 2014. This tax, known as the European Union Financial Transactions Tax ("EU FTT"), would apply to financial transactions between or with residents of participating Member States, and to transactions involving securities issued in participating Member States or derivatives of such securities.

This Essay argues that the EU FTT as proposed is flawed policy. Part I discusses how the European Union's responses to the problem of financial stability are constrained by provisions in the EU's foundational treaties. Parts II and III discuss the proposal's wisdom as a matter of policy, and conclude not only that the EU FTT does little to solve the problems of

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1. Pub. L. No. 111-203, 124 Stat. 1376 (2010).
2. *See infra* notes 10–12 and accompanying text.

financial instability in Europe, but also that the EU FTT threatens to undermine concurrent regulatory efforts to improve financial stability.

I. THE CONSTRAINTS UPON MEASURES TO PROMOTE FINANCIAL STABILITY IN EUROPE

In Europe, the task of combating financial crises is complicated by a mismatch between the expansive size and operating scope of European banks and the constrained resources available to control systemic risks.

Europe has some of the world's largest and most-interconnected financial institutions. As seen in Table 1 below, some European banks have assets that represent a large portion of — or even exceed — home-country GDP.

Table 1: Assets Relative to Home-Country GDP for Some Large European Banks

Firm Name	**Home Country**	**Assets as of Dec. 31, 2013 in USD Billions***	**Portion of Home-Country GDP in Percent†**
HSBC	U.K.	2,671	107.9
ING Bank	Netherlands	785	101.9
Nordea	Sweden	458	87.4
Santander	Spain	810	61.3
BNP Paribas	France	1,307	50.0
Group Crédit Agricole	France	1,239	47.4
Société Générale	France	897	34.3
Deutsche Bank	Germany	1,170	34.1
Barclays	U.K.	794	32.1
BBVA	Spain	423	32.0
Groupe BPCE	France	816	31.2
Unicredit Group	Italy	614	30.5
Standard Chartered	U.K.	674	27.2
Royal Bank of Scotland	U.K.	622	25.1

* Assets are consolidated at group level
† Percentages computed using 2012 GDP data
Sources: Financial Stability Board; U.S. Department of the Treasury; World Bank; corporate reports.

These banks operate throughout the European common market under the Union's "single passport" regime.[3]

However, the strict separation of Member State fiscal matters means that individual Member States must pay the costs of any measures meant

3. Second Council Directive 89/646/EEC, art. 6, 1989 O.J. (L 386) 1, 4.

to defuse crises-in-progress. The European Union and its Member States are prohibited from assuming each other's debts under the so-called "no-bailouts" clause of the Treaty on the Functioning of the European Union ("TFEU").[4] Thus the responsibility for creating and funding any emergency responses to crises — for example, the resolution of failing banks, or the extension of emergency liquidity assistance to individual institutions — falls upon individual Member States, rather than the Union.[5] The TFEU's fiscal constraints also preclude the Union from enacting some consolidated measures to alleviate crises, leaving Member States to pick up the slack. For example, there is not yet a Union-wide deposit insurance fund similar to the federal funds that insure deposits at nearly all U.S. depository institutions;[6] today, Member States fund domestic deposit-insurance schemes that cover their home-country institutions.[7]

This mismatch left European states vulnerable to financial crises and left many with no choice but to bail out failing firms. Such measures were taken during the last financial crisis, when Member States extended large amounts of emergency aid to their domestic financial firms.[8] Worryingly, European leaders have not yet remedied these vulnerabilities. Therefore, the possibility remains that the failure of a large financial firm could overwhelm the resources of a Member State and threaten the stability of the European financial system. In 2013, these fears resurfaced in Cyprus, where the Cypriot government was compelled to consider drastic measures, including a levy on insured depositors, to resolve or recapitalize its very large failing banks.[9]

4. *See* Consolidated Version of the Treaty on the Functioning of the European Union, art. 125, 2012 O.J. (C 326) 47, 99.

5. Bank-resolution schemes operate currently under a harmonized mutual-recognition framework. Directive 2014/59/EU, 2014 O.J. (L 173) 190. The Commission has proposed to supplement this framework with a Single Resolution Mechanism, which would direct the resolution of banks in the Euro Area and other participating Member States and would provide access to a common resolution fund built through contributions from participating banks. *See Proposal for a Regulation of the European Parliament and of the Council Establishing Uniform Rules and a Uniform Procedure for the Resolution of Credit Institutions and Certain Investment Firms in the Framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and Amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council*, COM (2013) 520 final (July 10, 2013). As for emergency liquidity assistance, the Bundesbank, not the European Central Bank, was responsible for providing emergency assistance to Hypo Real Estate Holding AG in 2008. Press Release, European Union, State Aid: Commission Approves German Rescue Aid Package for Hypo Real Estate Holding AG (Oct. 2, 2008), *available at* http://europa.eu/rapid/press-release_IP-08-1453_en.htm.

6. *See* 12 U.S.C. §§ 1811–1831d (2012).

7. Directive 2014/49/EU, 2014 O.J. (L 173) 149.

8. INT'L MONETARY FUND, MONETARY & CAPITAL MKTS. DEP'T, IMF COUNTRY REPORT NO. 13/67, PROGRESS WITH BANK RESTRUCTURING AND RESOLUTION IN EUROPE TECHNICAL NOTE 8 tbl.1 (2013), *available at* http://www.imf.org/external/pubs/ft/scr/2013/cr1367.pdf (noting that Member States approved over 4.5 trillion euros, or nearly 37 percent of EU GDP, to support the financial sector during the crisis).

9. Nicolas Véron, *Europe's Cyprus Blunder and Its Consequences*, BRUEGEL BLOG (Mar. 21, 2013),

European policy makers have adopted several strategies to work around the TFEU's constraints on effective financial-crisis-management mechanisms. Because Member States are constrained in their ability to deal with crises in progress, the Union has pursued instead more aggressive "ex ante" regulation meant to prevent crises. European policy makers contributed to strengthened global capital-adequacy and liquidity regulations promulgated in 2010 by the Basel Committee on Banking Supervision.[10] In October 2012, a group of experts assembled by the Commission recommended that Member States require banks to separate traditional banking activities from riskier activities such as proprietary trading.[11] The Union has also recently passed legislation that vests bank-supervisory authority with the European Central Bank ("ECB"), which, when fully implemented will consolidate the supervision of firms into a single market-wide entity.[12]

A fourth method seeks to prevent financial crises indirectly by imposing a tax on financial activities generally. In February 2013, the European Commission released a proposal for a harmonized tax on financial transactions, known as the European Union Financial Transactions Tax.[13] The Commission proposed a Directive that would require participating Member States to enact transposing legislation by September 30, 2013, with a view to collect the tax beginning January 1, 2014,[14] though it has yet to be finalized and implementation has been delayed until 2016 at the earliest.[15] The following Parts describe this proposal and its implications in detail.

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http://www.bruegel.org/nc/blog/detail/article/1048-europes-cyprus-blunder-and-its-consequences.

10. BASEL COMM. ON BANKING SUPERVISION, BASEL III: A GLOBAL REGULATORY FRAMEWORK FOR MORE RESILIENT BANKS AND BANKING SYSTEMS (rev. ed. 2011), *available at* http://www.bis.org/publ/bcbs189.pdf; BASEL COMM. ON BANKING SUPERVISION, BASEL III: INTERNATIONAL FRAMEWORK FOR LIQUIDITY RISK MEASUREMENT, STANDARDS AND MONITORING (2010), *available at* http://www.bis.org/publ/bcbs188.pdf [hereinafter BASEL III LIQUIDITY STANDARDS].

11. *See* HIGH-LEVEL EXPERT GROUP ON REFORMING THE STRUCTURE OF THE EU BANKING SECTOR, FINAL REPORT (2012), *available at* http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_en.pdf.

12. *See* Council Regulation (EU) 1024/2013, 2013 O.J. (L 287) 63; Regulation (EU) 1022/2013, 2013 O.J. (L 287) 5.

13. *Proposal for a Council Directive Implementing Enhanced Cooperation in the Area of Financial Transaction Tax*, at 19, COM (2013) 71 final (Feb. 14, 2013) [hereinafter *Second EU FTT Proposal*].

14. *Proposal for a Council Directive Implementing Enhanced Cooperation in the Area of Financial Transaction Tax*, art. 20, COM (2013) 71 final at 30 [hereinafter *Proposed Directive*].

15. Rebecca Christie & Jim Brunsden, *EU Financial-Transaction Tax Plans Turn to Derivatives*, BLOOMBERG (May 23, 2014), http://www.bloomberg.com/news/2014-05-23/eu-financial-transaction-tax-plans-turn-to-derivatives.html.

II. THE MECHANICS OF THE EU FTT PROPOSAL

Under the proposed Directive, participating Member States will impose a tax of at least 0.1% on the total consideration paid or owed in the purchase, sale, or exchange of non-derivative financial instruments,[16] and at least 0.01% of the notional amount of derivatives contracts.[17] Here, "participating Member States" refers to those Member States that have opted into the EU FTT and includes Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia, and Slovakia.[18]

For the purposes of the proposed Directive, "financial instruments" is defined broadly, and includes transferable securities; money-market instruments; units in collective investment undertakings (i.e., mutual funds); derivatives in securities; nearly all derivatives in commodities; credit derivatives; and other exotic derivatives that refer to inflation and similar indices.[19]

The applicable scope of the tax is also defined broadly. The tax is levied on any financial transaction that (1) has at least one party to the transaction that is established in the territory of a participating Member State; and (2) has as a party to the transaction a financial institution, acting either for itself or in the name of, or for the account of, another person, that is established in the territory of a participating Member State.[20] Here, establishment in the territory of a participating Member State is determined through use of both the "residential" principle — for example, the location of a financial institution's principal seat, permanent address, or authorization to do business[21] — and the "issuance" principle, which deems as established those nonresident persons and financial institutions that transact in financial instruments *issued* in a participating Member State.[22]

The tax's broad scope of application means that the EU FTT is likely to reach far beyond the markets of participating Member States and affect markets globally. For example, a bank that has its headquarters in a participating Member State — e.g., Deutsche Bank or Société Générale — would pay the tax on all of its financial transactions, including those conducted in financial markets outside of a participating Member State, such as London, New York, or Hong Kong, even when it acts as an agent

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16. *Proposed Directive*, *supra* note 14, arts. 6, 9, COM (2013) 71 final at 25–26.
17. *Id.* arts. 7, 9, COM (2013) 71 final at 25–26.
18. Council Decision 2013/52/EU, 2013 O.J. (L 22) 11.
19. Directive 2004/39/EC, Annex I § C, 2004 O.J. (L 145) 1, 41–42.
20. *Proposed Directive*, *supra* note 14, art. 3(1), COM (2013) 71 final at 23.
21. *See id.* art. 4(1)(a)–(f), COM (2013) 71 final at 24 (financial institutions); *id.* art. 4(2)(a)–(b), COM (2013) 71 final at 24–25 (other persons).
22. *See id.* art. (4)(1)(g), COM (2013) 71 final at 24 (financial institutions); *id.* art. 4(2)(c), COM (2013) 71 final at 35 (other persons).

for or on the account of a non-established person. Moreover, a financial institution that would otherwise not be established in a participating Member State becomes established merely by entering into financial transactions with established persons or financial institutions. For example, a sale of stock issued in the United States between a bank with headquarters and branches solely in the United Kingdom and an individual resident in Germany (a participating Member State) would be subject to EU FTT, but the same transaction conducted instead with a resident of the Czech Republic (not a participating Member State) would not. This means that a party established in a participating Member State cannot avoid the EU FTT by availing of a non-established financial institution.

The liability provisions help participating Member States collect a tax with wide extraterritorial application. Each financial institution involved in an applicable transaction is liable for the EU FTT.[23] If both parties to a transaction are financial institutions, the tax is levied twice. Though financial institutions that are parties to affected transactions are initially responsible for payment,[24] when the tax is not paid within three days of the transaction triggering it, all parties to the transaction, even those persons that are not financial institutions, become jointly and severally liable for the tax.[25] To illustrate using the UK bank-German resident transaction described above, if the UK bank did not pay the tax to Germany within the time frame established by article 11 of the proposed Directive, then the German resident would become jointly and severally liable, and the German government could instead collect the tax from its resident. Participating Member States may expand the scope of this joint and several liability to other persons through transposing legislation.[26]

The proposed Directive contains a short list of exempt parties and transactions. The list of exempt parties contains public entities[27] and organizations that form the infrastructure of the financial markets.[28] The exempt transactions help to limit the tax's direct impact on primary capital markets, public-finance activities, and the execution of monetary policy.[29] The tax does not apply to primary market transactions such as underwriting,[30] nor does it apply to corporate mergers and acquisitions

23. *Id.* art. 10(1)–(2), COM (2013) 71 final at 26–27.

24. *Id.*

25. *Id.* art. 10(3), COM (2013) 71 final at 27.

26. *Id.* art. 10(4), COM (2013) 71 final at 27.

27. *Id.* art. 3(2)(c), COM (2013) 71 final at 23.

28. *Id.* art. 3(2)(a)–(b), COM (2013) 71 final at 23 (excluding Central Counter Parties, Central Securities Depositories, and International Central Securities Depositories when acting in their capacities as such).

29. This is not to say that the EU FTT will have *no* impact on these activities. This Essay argues later that the EU FTT is likely to have a negative effect on them. *See infra* Part III.

30. *Proposed Directive*, *supra* note 14, art. 3(4)(a), COM (2013) 71 final at 23–24.

that involve the acquisition with stock of a majority of the voting rights in an acquired company, or the sale of all the assets and liabilities of a company in exchange for some stock consideration.[31] Moreover, transactions with financial-assistance funds such as the European Financial Stability Facility and the European Stability Mechanism, and with international organizations such as the European Union, the European Investment Bank, and EURATOM, are exempt.[32] Transactions with the ECB and the central banks of Member States are also exempt.[33]

The Directive does not exempt, however, transactions where financial institutions act as an intermediary. Therefore, transactions that involve one or more nonexempt intermediaries will trigger the tax at each step, increasing the effective tax rate for the entire transaction to a level many times that of the statutory rate. To illustrate, assume a person redeems his or her units in a collective-investment scheme.[34] Upon receipt of the redemption order, the scheme's trustee would sell assets in the secondary market to cover the redemption. This sale would likely be completed through a financial institution acting as a broker, who may then transact with a clearing-system participating financial institution, who may then trade with another clearing-system participant financial institution to complete the trade. The broker would then return the proceeds of the sale to the trustee, who would deliver them to the customer. With the exception of the central clearing party that intermediates the transaction between the clearing-system participants, each leg of the each transaction could be affected (or twice-affected) by the tax, increasing the effective tax burden for the transaction beyond 0.1% to an amount many times greater.

III. THE EU FTT WILL NOT IMPROVE STABILITY AND MAY HAMPER IT

In its 2013 proposal for an EU FTT Directive, the Commission advanced three aims of the EU FTT: to harmonize the legislation in the area of financial transactions taxes; to "ensure[] that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis and creating a level playing field with other sectors from a taxation point of view"; and to "create[] appropriate disincentives for transactions that do not enhance the efficiency of financial markets thereby complementing regulatory measures to avoid future crises."[35] That the

31. *Id.* art. 3(4)(g), COM (2013) 71 final at 24; *see also* Council Directive 2008/7/EC, art. 4, 2008 O.J. (L 46) 11, 13 (providing that corporate reorganizations are exempt generally from indirect taxes).

32. *Proposed Directive*, *supra* note 14, art. 3(4)(d)–(f), COM (2013) 71 final at 23–24.

33. *Id.* art. 3(4)(b)–(c), COM (2013) 71 final at 23.

34. This example is adapted from EUROPEAN UNION COMMITTEE, TOWARDS A FINANCIAL TRANSACTION TAX?, 2010-12, H.L. 287, at 31 fig.1 (U.K.).

35. *Second EU FTT Proposal*, *supra* note 13, at 2–3.

proposed Directive will help achieve the first two goals is uncontroversial.[36] But to what extent will the Directive advance the third aim of promoting financial stability? This Section argues not only that the tax does little to solve the problem of financial crises, but also that the tax may weaken concurrent regulatory measures the Commission seeks to complement.

The EU FTT's broad scope also sweeps in transactions upon which many financial institutions depend for daily liquidity. Financial institutions commonly borrow and lend surplus funds in the form of repurchase agreements ("repos"). Repos are often made for very short terms, often overnight.[37] The European repo market is large and is an important source of funding for financial institutions.[38] If a tax were levied on each daily repo transaction, the costs of sustaining such transactions would be increased significantly, likely resulting in a drastic reduction of the repo market. This could make it more difficult for banks to acquire high-quality assets and increase their vulnerability to liquidity crises. For these reasons other financial regulators often create exceptions for repos secured by high-quality collateral; for example, when faced with a similar decision, the U.S. Securities and Exchange Commission included express exceptions in U.S. securities regulations to keep some high-quality repos (e.g., those collateralized by sovereign debt) available to some financial institutions that depend on financing supported by highly liquid assets.[39]

Second, the tax is at odds with other regulatory measures that are meant to improve financial stability. For example, existing Member State regulations and recently promulgated international regulations require banks to maintain larger portfolios of so-called "high-quality liquid assets" as insurance against liquidity stress.[40] The definition of "high-quality liquid

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36. The proposed Directive will harmonize financial transactions taxes in the participating Member States by requiring participating Member States to charge a tax as defined in the Directive, *Proposed Directive*, *supra* note 14, art. 1, COM (2013) 71 final at 19, and by barring participating Member States from levying any other tax on these transactions, *id.* art. 15, COM (2013) 71 final at 29. The Commission expects participating Member States to collect around 31 billion euros annually. *Second EU FTT Proposal*, *supra* note 13, at 14.

37. EUROPEAN CENT. BANK, CHANGES IN BANK FINANCING PATTERNS, at 35 chart A.3 (Apr. 2012), *available at* http://www.ecb.europa.eu/pub/pdf/other/changesinbankfinancingpatterns201204en.pdf (revealing that in a survey of 105 euro-area banks, no less than around two-thirds of repos were overnight from 2002 to 2011).

38. INT'L CAPITAL MKT. ASS'N, EUROPEAN REPO MARKET SURVEY NUMBER 24 - CONDUCTED DECEMBER 2012, at 4 (Mar. 2013), *available at* http://www.icmagroup.org/assets/documents/Market-Info/Repo-Market-Surveys/No-24-Dec-2012/ICMA-ERC-European-Repo-Survey-December-2012.pdf (reporting that the 71 financial institutions surveyed had 5.6 trillion euros in repo and reverse-repo contracts outstanding).

39. *See* 17 C.F.R. § 270.5b-3 (2014).

40. *E.g.*, Liquiditätsverordnung [LiqV] [Liquidity Regulation], Dec. 14, 2006, BUNDESGESETZBLATT, Teil I [BGBL. I] at 3117 (Ger.) (Member State regulations); BASEL III

assets" for these purposes comprises cash; central-bank reserves; marketable securities representing claims on, or claims guaranteed by, public entities; and high-quality corporate bonds and covered bonds.[41] The EU FTT increases the costs of acquiring and maintaining a portfolio of marketable securities, public and private, thus increasing the cost of compliance.

Third, the lack of an exemption for financial intermediaries could promote an excessive level of disintermediation or cause shifts into excessively low-risk, low-return investments. Indirect investment schemes — such as mutual funds — help ordinary investors achieve the benefits of diversified investments without the cost and effort of building and monitoring a diversified portfolio.[42] However, the "cascading" fee structure described above will represent a significant added cost to indirect investment vehicles.[43] This could discourage investors, including individuals, from investing in mutual funds and other indirect investment vehicles, thus exposing investors to undiversified market risks, or promote a shift to less-taxed but lower-return investments, such as bank deposits or life insurance savings products such as whole life policies. Such a shift would injure individual savers.

The FTT proposal may also make it more difficult for some Member States to borrow money, thus worsening European sovereign-debt problems. Though primary auctions of Member State government debt would be exempt, the EU FTT proposal contains no general exception for public debt. Any secondary sales or rehypothecation would be taxed. This could reduce the liquidity in some markets for government debt. Though the debt of creditworthy Member States, such as German bunds, would be largely unaffected, some Member States with difficulties borrowing from the public (e.g., Italy) could find that their difficulties are magnified by the FTT.[44]

At root, the EU FTT does not deal with the primary threats to European financial stability. Most of Europe's financial intermediation occurs in the "traditional" banking system of ordinary bank lending,[45]

LIQUIDITY STANDARDS, *supra* note 10 (international regulations).

41. *E.g.*, BASEL III LIQUIDITY STANDARDS, *supra* note 10, ¶¶ 40–42.

42. *See generally* RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 153–69 (6th ed. 2000) (explaining the theory of reduced variability through diversification).

43. *E.g.*, EUROPEAN UNION COMMITTEE, *supra* note 34, ¶ 99.

44. Italian officials have expressed these worries. *See* Gabriele Steinhauser, *Hurdles Face 'EU 11' Trading Tax*, WALL ST. J. REAL TIME BRUSSELS (Feb. 14, 2013, 12:13 PM), http://blogs.wsj.com/brussels/2013/02/14/hurdles-face-eu-11-trading-tax/.

45. INT'L MONETARY FUND, MONETARY & CAPITAL MKTS. DEP'T, IMF COUNTRY REPORT NO. 13/71, FINANCIAL INTEGRATION AND FRAGMENTATION IN THE EUROPEAN UNION TECHNICAL NOTE 10 (2013), *available at* http://www.imf.org/external/pubs/ft/scr/2013/cr1371.pdf ("The EU financial systems are mostly bank-based, as stock and bond markets provide a relatively modest share of . . .

which is not subject to the EUFTT. The "shadow banking system" of securitized loans trading in secondary markets, which contributed to large systemic problems in the United States,[46] composes only a small part of the European financial market.[47] Thus the effects of the EU FTT will be felt only in a relatively unimportant part of the financial system. Moreover, it was the European traditional banking system, not European securities markets, that suffered some of the worst failures of the recent financial crisis. The systemic crises in Ireland and Cyprus were the result of poor lending decisions by banks: for the former, in Irish real estate;[48] for the latter, in Greek debt.[49] The same is true for Europe's large bank failures, such as Northern Rock in the United Kingdom and Hypo Real Estate in Germany, which suffered losses tied to real-estate lending and investments.[50] A financial transactions tax, if one had been in place, would have done nothing to prevent the mistakes that led to these failures. If anything, the EU FTT could shift more European finance into the traditional banking system, worsening the already worrisome too-big-to-fail issues in many participating Member States.[51]

These issues have fed vigorous criticism of the proposal. The UK European Union Committee criticized sharply the initial EU-wide 2011 proposal in a report.[52] Even participating Member States have expressed off-the-record doubts about the EU FTT. An April 2013 non-paper by working-level representatives from ten participating Member States communicated concern about the EU FTT's effects in the repo market and public finance.[53]

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private sector [financing].").

46. *See generally* FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT (2011), *available at* http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf (describing, as part of its investigation into the causes of the U.S. financial and economic crisis, the large increases in the size of the shadow banking sector and the sector's systemic fragility).

47. The European Commission estimates that shadow banking assets make up 13 percent of the UK financial system and 5 percent of the German system, well below the United States' fraction of 35–40 percent, and below the global average of 25–30 percent. *Green Paper on Shadow Banking*, at 4, COM (2012) 102 final (Mar. 19, 2012).

48. *See* COMM'N OF INVESTIGATION INTO THE BANKING SECTOR IN IR., MISJUDGING RISK: CAUSES OF THE SYSTEMIC BANKING CRISIS IN IRELAND 31–38 (2011) (Ir.), *available at* http://www.bankinginquiry.gov.ie/Documents/Misjuding%20Risk%20-%20Causes%20of%20the%20Systemic%20Banking%20Crisis%20in%20Ireland.pdf.

49. G.I., *An Interview with Athanasios Orphanides: What Happened in Cyprus*, ECONOMIST FREE EXCHANGE (Mar. 28, 2013, 1:32 PM), http://www.economist.com/node/21574620.

50. *See* TREASURY COMMITTEE, THE RUN ON THE ROCK, 2007-8, H.C. 56-I (U.K.), *available at* http://www.publications.parliament.uk/pa/cm200708/cmselect/cmtreasy/56/56i.pdf (Northern Rock); Jonathan Keehner & Oliver Suess, *Hypo Real Estate's Collapse on the Slopes*, BLOOMBERG BUSINESSWEEK MAG. (Sept. 2, 2010), http://www.businessweek.com/magazine/content/10_37/b4194039945498.htm (Hypo Real Estate).

51. *See supra* Table 1.

52. EUROPEAN UNION COMMITTEE, *supra* note 34.

53. FTT WORKING PARTY ON TAX QUESTIONS – INDIRECT TAXATION, IMPLEMENTING

CONCLUSION

The EU FTT represents poor execution of an admirable policy goal. The Commission's proposal ignores the lessons of the previous financial crisis, and threatens to undermine its other efforts to prevent future crises. With amendments, some of the worst problems can be fixed. However, getting at the problem of financial crises requires a more fundamental approach.

It is alarming that a great deal of political capital will likely be spent in service of a measure that is itself only a workaround of self-imposed constraints contained in the EU foundational treaties. The better path for both financial stability and European integration is to loosen the onerous treaty restrictions that prevent effective financial regulation and pursue closer fiscal integration. The formation of a "banking union" — with EU-wide deposit insurance and explicit lender-of-last-resort responsibilities with the ECB — is the best way forward. The proposed EU financial transactions tax, though more feasible in view of the current constraints, would be a step backward. European leaders should act quickly to protect against financial crises before they again inflict severe economic damage.

ENHANCED COOPERATION IN THE AREA OF FINANCIAL TRANSACTION TAX: QUESTIONS TO THE COMMISSION FROM THE WORKING LEVEL, at 2–3 (Apr. 16, 2013), *available at* http://www.openeurope.org.uk/Content/Documents/Pdfs/2013FTTnonpaper.pdf.